

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provision of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

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COMMENTS OF
EXCEL TELECOMMUNICATIONS, INC.

Excel Telecommunications, Inc. ("Excel") respectfully submits its Comments on the Further Notice of Proposed Rulemaking in the above-referenced proceeding¹ pursuant to the Federal Communications Commission's ("Commission") Public Notice released February 16, 1999.

Excel is one of the nation's leading providers of long distance telecommunications services, primarily oriented toward the residential and small business markets throughout the nation, and intends to offer local exchange communications services to its customers commencing later this year. As such, Excel has a substantial interest in assuring that the Commission adopts policies and rules which afford the maximum protection to consumers, while allowing carriers sufficient flexibility to engage in innovative marketing and to stay abreast of rapidly evolving commercial practices and

¹ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (rel. Dec. 23, 1998) ("Report and Order" or "FNPRM").*

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standards. Excel therefore urges the Commission to adopt rules reflecting the positions set forth below.²

I. INTRODUCTION AND SUMMARY

Excel files these comments with the Commission's stated purpose in the *Report and Order* as a guiding principle: "We emphasize that the rules we adopt strike a balance between our goals of protecting consumers and of promoting competition ... Nonetheless, our ultimate concern in this proceeding is protecting consumers and consumer choice." (*Report and Order*, ¶ 16). The industry's past mistakes and the abuses of a few unscrupulous carriers have created a situation that requires that consumer protection be the paramount concern. Although competitive concerns are of great importance as carriers attempt to break into the local market and long distance prices continue to fall, such concerns rightly should take a back seat to consumer protection at this juncture.

Excel also respectfully submits that part of the solution to slamming must be increased prosecution of offenders, rather than unnecessarily restrictive and costly rules imposed on an entire industry. Habitual offenders will continue to flout whatever rules are finally adopted. A few "bad apples" should not cause substantially increased costs to law-abiding carriers in the form of over-restrictive rules -- which inevitably would increase costs to the consumers sought to be protected -- when, no matter what rules are in effect, bad apples will continue their behavior unfazed. Prompt and certain enforcement action is the answer for those who will not play by the rules.

² Excel offers its views herein on several, but not all, of the matters posed in the *FNPRM*. For example, while Excel believes that authorized carriers should be able to collect additional sums from unauthorized carriers, the form and amount of such collection are issues that are interrelated with the possible establishment of a neutral third party administrator ("TPA") to handle liability issues -- a concept that Excel strongly supports. Excel reserves the right to file reply comments on this and other issues raised in the *FNPRM*.

II. COMMENTS

A. Carrier Changes Using the Internet

Excel believes that use of the Internet for submission of carrier change requests and requests to implement and/or lift PC freezes is the most important matter being considered by the Commission in this Further Rulemaking. The Internet is accurately portrayed as the future direction of commerce due to its ever-increasing availability to consumers, ease of application, efficiency, and speed, to mention but a few benefits. Many carriers are already using the Internet to market to potential subscribers and serve current subscribers. Provided as Attachment 1 is a recent article from the magazine *Telephony*, provided simply as an example of the discourse in the industry. As many carriers are quickly recognizing, when used properly, the Internet allows carriers to provide speedier and superior customer service and increases carriers' operating efficiency. Ultimately, this can serve to enhance consumers' ability to make informed choices with greater ease, while also bolstering competitive carriers' ability to market to and obtain new customers. As this Commission has itself recognized, the Internet offers "a quick and efficient method of signing up new subscribers and should be made widely available" (*Report and Order*, ¶ 169). The dangers of Internet commerce, however, are also being discovered daily as unscrupulous individuals find new ways to exploit consumers.

With these issues clearly in sight, Excel urges the Commission to adopt rules permitting the use of the Internet for submission of carrier changes, and initiation and/or removal of preferred carrier freezes with appropriate security measures. In particular, Excel urges the Commission to define certain categories of subscriber information which can serve to verify a subscriber's intent and authorization to change carriers, and/or initiate or lift a PC freeze. Excel proposes the following

categories of information for the Commission's consideration that would serve to verify an order submitted via the Internet: (1) valid credit card number; or (2) other customer-specific information such as a subscriber's date of birth, social security number (or last four digits thereof), or mother's maiden name. Excel submits that, as discussed in detail below, obtaining a valid credit card number provides compelling evidence, and certainly sufficient evidence, of verification currently required or being considered by the Commission.

Excel submits that the above-described categories of information provide sufficient verifying information to address the Commission's concern that an "electronic signature fails to identify the 'signer' as the actual individual whose name has been 'signed' to the Internet form" (*Report and Order*, ¶ 171). Personal credit card information provides ample evidence that the consumer named on the change order is, in fact, the person submitting the order. Neither a consumer nor an unauthorized party would lightly regard supplying his own or another's valid credit card information as part of a service order. Indeed, obtaining a customer's credit card number is in some respects superior to a written LOA, inasmuch as it is more difficult to fraudulently obtain and use another's credit card than to merely sign a name. The second category includes information that is currently used to verify telemarketing generated orders. The only difference is that the order is submitted via the Internet rather than over the phone.³

Excel notes that the Commission might consider requiring a notice to consumers regarding the security of the transmission of personal information. Consumers who use the Internet to initiate

³ Assuming the Commission ultimately crafts rules which allow the submission of orders via the Internet to change carriers and to initiate and/or lift PC freezes, as an added safeguard, Excel intends to send an e-mail back to the originator to confirm all of the details of the transaction.

changes to their account (carrier change or PC freeze) make a conscious choice to do so, having weighed the pros and cons. Nonetheless, requiring certain minimal warnings as a prophylactic measure can only serve to enhance the protections offered to consumers. Excel recommends that such notice simply advise the consumer of what type of security measure (*i.e.*, encryption, secure server), if any, is used when the consumer transmits the personal verification data.

Excel has included customer requests for implementation and removal of PC freezes in its proposal regarding use of the Internet because there should be no differentiation between the procedures that are acceptable for effectuating PC change requests and PC freeze requests. There are many benefits to allowing customers to order implementation and/or lifting of PC freezes via the Internet. Requests may be made over the Internet at any time, any day of the week – thus a customer can make changes to his account at his own convenience, without regard to carriers' customer service hours and without needing to wait on hold. In addition, use of the Internet minimizes the potential for ILEC overreaching or inappropriate win-back attempts, without compromising protection to consumers. Further, the Internet is faster than regular mail and more efficient for some carriers (see Attachment 1). Excel is not suggesting that any of the current verification methods for implementing and lifting PC freezes be supplanted; rather, the Internet should be offered as an additional option for those consumers who choose to use it based on their needs and preferences. Finally, more customers are likely to avail themselves of the protections offered by PC freezes if they are able to implement and lift PC freezes via an additional safe and efficient avenue, such as the Internet.

B. Independent Third Party Verification

Excel commends the Commission for its clarification in the *Report and Order* that independent third party verifiers must be truly independent from both the carrier and telemarketer. Excel respectfully submits that the Commission should not further regulate third party verification at this time; instead the Commission should monitor closely whether the recently adopted changes and its increased enforcement measures reduce the incidence of slamming. Further regulation of third party verification will result in rigid, narrow requirements that may not reflect the realities of the marketplace. In particular, Excel strongly urges the Commission not to adopt NAAG's suggestion that the third party verification be separated entirely from the sales call or that the Commission should define the form and content of the verification. Such a proposal ignores the plain realities of current legitimate commercial practices. In most commercial transactions, customers can call a merchant and request a product or service; no verification is needed. Thus, the Commission's rules, which are necessary to protect consumers, do operate somewhat at odds with consumers' expectations that their orders will be processed immediately. The current practice of many carriers to hand off the customer at the end of the telemarketing sale to the third party verifier addresses both the need to protect consumers and the carrier's need to confirm a sale with some level of efficiency. If NAAG's proposal is adopted, it has the potential to invalidate legitimate orders, it will clearly delay the process of effectuating consumers' choices, and it will add unnecessarily to carriers' cost of doing business, without concomitant benefit. It would be completely counterintuitive to invalidate consumer orders if a follow-up call could not be completed, and there are any number of common sense reasons why such third party verification might not be completed. Finally, it is irrelevant whether the third party verification is completed during the same call or a

separate call if the telemarketer has misled or confused the consumer. Excel submits that the ultimate goal should be to weed out those carriers that engage in deceptive marketing, rather than burdening all carriers with onerous, rigid requirements that are far afield from the degree of regulation applied to other businesses or telemarketing methods.

Excel respectfully submits that third party verification can, in fact, be "independent" if the telemarketing carrier remains on the line during the verification so long as certain precautionary guidelines are followed. In particular, the telemarketer must not push or goad the consumer in any way. One important goal of the Commission's verification rules is to ensure that consumers are able to make informed decisions; allowing the telemarketer to remain on the line and answer consumers' questions serves to further that goal. While the goal of the telemarketing sale is to provide all of the information that the customer needs to make an informed decision, it is certainly conceivable that a customer could want reassurance or have an additional question. Clearly, if the telemarketer overreaches the third party verifier must be in a position (and, in fact, required) to remove the telemarketer from the call or reject the order.

C. Submission of Reports by Carriers and Registration Requirement

The Commission also considers whether carriers should be required to submit reports of slamming incidences and/or to register with the Commission. Absent compelling evidence as to the efficacy of the proposed reporting of slamming, Excel respectfully submits that the Commission should not adopt such a proposal at this time. Excel urges the Commission to carefully weigh the

benefits of reporting against the costs if it determines to adopt such a proposal, and to fashion narrowly tailored rules.⁴

Excel is concerned that submission of reports by carriers could easily turn into a game of finger-pointing in which carriers do not consider their own transgressions to be reportable offenses, but find much to report about other carriers. If the Commission does ultimately determine to require such reports, Excel urges the Commission to impose as limited a burden on carriers as possible (for example, annual reporting, not monthly) and to recognize the limited empirical value of such reports.

Excel supports all Commission initiatives to curb slamming and believes that implementing a simple registration requirement may serve to bolster the Commission's efforts. In particular, registration allows the Commission to monitor entry of carriers into the market and any associated spikes in slamming activity. Further, registration ensures that the Commission has a contact point for complaints, and to the extent necessary, can assist consumers who are unable to reach their carrier.

D. Neutral Third Party Administrator

Excel has been active in a group of industry participants that is crafting a proposal for the creation of a neutral third party administrator ("TPA") for resolution of slamming incidences. These parties expect to file a detailed proposal and request for waiver of the Commission's liability rules as envisioned by the Commission in the near future. (*Report and Order*, ¶¶ 55-57). Accordingly, Excel strongly supports the Commission's initial determination to consider such a proposal and

⁴ Excel notes that the approval of a neutral third party administrator for resolution of slamming incidences could provide a meaningful and much less burdensome avenue for obtaining reports on slamming.

urges the Commission to work with the industry to effectuate such a solution. At this juncture, the TPA proposal does not include oversight of such functions as effectuation of PC changes and PC freezes. However, the Commission should continue to encourage and support industry efforts to create an independent administrator for carrier changes and PC freezes.

III. CONCLUSION

Excel commends the Commission for taking a proactive approach to dealing with emerging issues, such as use of the Internet for carrier changes. Excel respectfully urges the Commission to consider the proposal put forth by Excel with respect to verifying Internet change orders. Excel submits that additional regulation of independent third party verification is unnecessary, but urges the Commission to monitor the situation to ensure no further refinements are needed in the future. Excel respectfully submits that the costs of requiring carriers to report slamming incidences far outweigh any potential benefits and thus urges the Commission not to adopt such a proposal at this time. Finally, Excel urges the Commission to work collectively with industry participants to create a neutral third party administrator.

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Dated: March 18, 1999

Respectfully submitted,

A handwritten signature in cursive script, reading "Marcy Greene", is written over a horizontal line.

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ATTACHMENT 1

No postage necessary

Carriers make their way into on-line billing

PHILLIP J. BRITT

Regional Bell operating companies and interexchange carriers alike are looking at Internet billing as a way to reduce expenses, enhance customer retention and increase revenue.

By presenting statements on the Internet, billing postage costs can be reduced as much as 60¢ per item, said Joey Schultz, vice president of consumer services for BellSouth, which is ahead of the other RBOCs in terms of rollout plans for Internet billing. But the real cost savings would be from presenting other products and services to the "cyber-customer" from the carrier's on-line site, rather than via bill stuffers and separate mailings, he said.

In addition, customers who order or submit questions via the Internet are much less costly to service than customers who call a salesperson or a technician, Schultz said. For example, customers using the "on-line bill review option" now can use on-line queries for line item charges. "It's a way to build better customer service," he said.

Customer service should be the driving factor in undertaking Internet billing because it helps so much with retention, said Joe Tinnerello, vice president of development for Chicago-based Mobius Management Systems Inc., which develops software for retrieval and presentation of large amounts of transactional data.

BellSouth has an ongoing pilot with employees and vendors, an on-line customer bill review option and a partnership with First Union and CheckFree, whereby customers can pay their BellSouth bills at the First Union Web site. This represents a big effort compared with those of the other RBOCs, which are more tentative.

Bell Atlantic in mid-October launched on-line bill viewing for its customers in Maryland, Virginia, Washington, D.C., and West Virginia, enabling them to view the current month and previous two months' bills. However, now there is

no projected date for Internet billing pilots or full rollouts.

Ameritech had hoped to roll out Internet billing sooner, but the demands of Y2K projects have pushed it back until at least the second quarter of 1999, said Michael

'The on-line bill review option [is] a way to build better customer service.'

—Joey Schultz, BellSouth

Flickinger, product manager. SBC Communications is focusing more on electronic commerce right now, a spokesman said. Meanwhile, a U S West spokesman said the carrier isn't doing much in Internet billing now, though it is discussing it.

But on the IXC side, AT&T, which started offering on-line billing to customers in March through AT&T One Rate Online, is looking at a deal with CheckFree to offer bill viewing and payment options at non-AT&T sites, a spokesman said.

On-line billing saves the company about 30% in administrative costs compared with paper billing, he added.

With on-line billing, customers can get many questions answered without talking to a customer service representative. Administrative costs are reduced because there's no bill to print or paper receipt to reconcile.

All payments are made via credit cards. When the deal is completed with CheckFree in 1999, AT&T is looking to add a check payment option.

When on-line billing goes live for BellSouth customers in December, they will be able to initiate payment directly from the BellSouth Web site. They will also be able to continue to use the CheckFree site. Customers



will be able to choose to have a set amount withdrawn from a bank account each month, much like a utility budget plan, or they can have the exact amount paid through an electronic withdrawal or a credit card payment.

BellSouth also offers \$5 rebates and other incentives for customers to buy products and services through the company's Web site.

Although BellSouth and other carriers aren't looking to be on-line bill aggregators today, they haven't ruled out that possibility for the future. ☉

BRIEFLY

AT&T AND WORKERS

Robert Annunzio, president of AT&T's business services unit, said last week that the division would hire 1000 additional salespeople to sell phone and data services to corporate customers because of business expansion. The hiring comes at a time when the carrier is slashing 18,000 jobs to cut overall costs.

PRAISE-WORTHY

According to The Yankee Group's annual survey, more consumers who use AT&T for long-distance said they were satisfied with their service than consumers who use Sprint or MCI. This distinction, drawn from a survey of 2000 households, has gone to Sprint for the last four years.